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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,269	04/09/2004	Henry Sterchi	723-1502	8633
27562 7590 01/17/2008 NIXON & VANDERHYE, P.C. 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			EXAMINER OMOTOSHO, EMMANUEL	
			ART UNIT 3714	PAPER NUMBER
			MAIL DATE 01/17/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/821,269

Applicant(s)

STERCHI ET AL.

Examiner

Emmanuel Omotosho

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04/09/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2,9-14 and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,435,554 to Lipson.

3. Claim 1,9,19: Lipson teaches a baseball video game wherein animated action is performed by a pitcher character in response to input by a user provided through a user-operable controller, a method of controlling game play comprising monitoring for user input on the user-operable controller requesting release of a baseball pitch by the pitcher character (fig 4b el. 112). Detecting when user input is requested on the user-operable controller requesting release of the baseball pitch by the pitcher character (fig 4b el. 114,116). Comparing a time at which the user input is detected to an optimal pitch release timing (fig 4b el. 128,130). Then controlling a timing of a break on the baseball pitch based on the comparison (Par 9:56-66, Par 13:15-28, fig 4c el. 200).

4. Claim 2,10,18: Lipson inherently teaches the timing of the break on the baseball pitch occurs relatively early in its flight when the time at which the user input is detected occurs earlier than the optimal pitch release timing. This feature is inherent since Lipson's system allows the pitcher to select what type of pitch first (curve, fast etc... Par

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4:67-5:1-14) and Lipson's maximum and optimal break is based on the type of pitch and user selections (Par 13:15-27)

5. Claim 3,11,19: Lipson inherently teaches the timing of the break on the baseball pitch occurs relatively late in its flight when the time at which the user input is detected occurs at or during the optimal pitch release timing. This feature is inherent since Lipson's system allows the pitcher to select what type of pitch first (curve, fast etc... Par 4:67-5:1-14) and Lipson's maximum and optimal break is based on the type of pitch and user selections (Par 13:15-27).

6. Claim 4,12,20: Lipson inherently teaches the timing of the break on the baseball will result in the pitch being outside of a batter character's strike zone when the time at which the user input is detected occurs after the optimal pitch release timing (Par 6:36-50, fig 38 el. 78,80).

7. Claim 5,13,21: the method of claim 1 wherein the optimal pitch release timing is a period of time (abstract).

8. Claim 6,14,22: the method of claim 5 wherein the amount of time in the period of time forming the optimal pitch timing is variable (Par 9:22-49).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 7-8,15-16 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,435,554 to Lipson.

12. Claim 7,15,23: Lipson teaches all the present invention but fail to specifically teach the amount of time in the period of time is varied based on performance statistics of the pitcher character. However, Lipson pointed out that basing the pitcher's abilities and skills on statistical data is extremely old in the art (Par 1:24-39). Therefore, it would have been an obvious design choice well within the skill set of an ordinary skill artisan to have the amount of time in the period of time varied based on performance statistics of the pitcher character. One would be motivated to incorporate this teaching if it is desired that the abilities and skill set of a pitcher be affected by the pitchers previous performance, further adding to the realism of the video game.

13. Claim 8,16,24: Lipson fail to teach the amount of time in the period of time is varied based on a type of pitch selected by input on the user-operable controller that controls the action performed by the pitcher character. However, it is generally known in baseball that some pitch-types are harder to throw. Therefore, it would have been obvious to one of ordinary skill in the art to simulate the difficulties of the pitch-types by

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assigning a different time amount to each type of pitch to further simulate the difficulty level of the specific pitch. This would further add realism to the game.

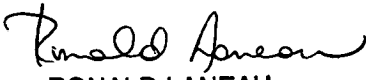
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emmanuel Omotosho whose telephone number is (571) 272-3106. The examiner can normally be reached on m-f 10-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EO


RONALD LANEAU
PRIMARY EXAMINER

1/15/08